IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HBC 44J OF 2006S

BETWEEN : TIMOCI VUSOVUSO of Mau Village, Namosi, Book Binder

PLAINTIFF

A N D : GOVERNMENT PRINTER at Viria Road, Suva in Fiji

1ST DEFENDANT

A N D : ATTORNEY GENERAL OF FIJI joined Pursuant to the Crown Proceedings Act Cap 24, Suvavou House, Suva in Fiji

2ND DEFENDANT

Counsel for the Plaintiff	:	**D Prasad**	: **Diven Prasad Lawyers**
Counsel for the Defendants	:	**E Tuiloma) Ms F Serulagilagi)**	: **Attorney-General's Chambers** :
Date of Decision	:	**25 July, 2008**	
Time of Judgment	:	**9.30a.m.**	

JUDGMENT

This is a claim in damages for personal injuries sustained in the course of employment. The plaintiff was employed by the Government Printer at its printing plant at Vatuwaqa. He first joined the Department in October, 1976 as an apprentice technical officer

(Binding) and had risen to be one of the supervising officers of the Binding Section at the time of the accident on 3 October 2005.

The facts surrounding the accident as agreed to by the parties are briefly as follows. On the morning of 3 October 2005 following the 10 o'clock tea break, the plaintiff was instructed to supervise the binding work of the 2006 Government diary. With him were Ms Fanny Sawana and Ms Maya Wati. There was a binding machine the centre piece which is normally operated by one worker. However, the production of the Government 2006 dairy was on a deadline and in such a situation, there are usually more than one working with the machine. This was such an occasion.

According to Mataiasi Bulivou, the Acting Government Printer and Production Manager, the Martin-made binding machine is quite old having been installed in 1974. It was manufactured in Switzerland and the Court understands such machine is no longer in production. Mr Bulivou confirmed that the machine's manual including the safety guidelines are not available having being lost years ago. While there had not been any accident on the machine since its installation, there have been break-downs. Maintenance and repair works had been carried out through the years. Worn-out and/or damaged parts of the machine had been replaced and when and where such parts were not available either because they were not in stock or that there were no longer any parts due to the cessation of production of the machine altogether, these were replaced by purchase of parts not belonging to the same brand. In some instances, as in the case of the pusher mechanism, which is responsible for clearing the conveyor system, only one instead of the usual two pushers, was working, the other was no longer operating. According to the plaintiff, who had spent 18 years operating the machine, the absence of the second pusher would from time to time cause congestion to the system resulting in papers getting stuck on the machine. The only way the system is cleared is manually by hand.

On 3 October, 2005, Ms Sawana, who has had at least 4 years experience working on the machine, was operating it. The plaintiff was further up at the impression table where sections of books emerge and are put together and sewn. Ms Sawana was pushing the

machine pedal that works the sewing mechanism when one of the sections of the book fell off the conveyor. She took her feet off the pedal thereby stopping the machine, while she bent down to retrieve the section from the floor. Unbeknown to her, the plaintiff took the opportunity of the machine's temporary stop, to clear a paper jam using his hands in helping to push the books along.

There is debate where the plaintiff was actually standing at the time. According to him, he was on the same side as the operator, whereas Ms Sawana in her evidence, says that he was standing at the back of the machine. In any case, the Court believes where exactly the plaintiff was standing is of little significance. What is important is the fact established from the evidence before the Court, that Ms Sawana was not aware of the plaintiff's activities at the time she stopped the machine to enable her to pick up the section of the book. When Ms Sawana put the section back on the conveyor and stepped back onto the pedal, she was not aware that the plaintiff had his hand in the machine. Ms Sawana re-started the machine and in the process catching the plaintiff's right hand still in the machine, resulting in his right hand being crushed by the impression table.

The plaintiff was taken to CWM Hospital immediately following the accident where he was treated and then admitted and discharged 2 days later, on 5 October. He underwent hand physiotherapy on four (4) occasions and was briefly admitted on 9 November, 2005 for removal of wires from his right hand. He remained on sick leave for the maximum entitlement of 180 days until he was retired on medical grounds pursuant to the recommendation of the Medical Board and the Department Staff Board.

Extent of Injuries and Treatment

The plaintiff sustained open comminuted fractures of his right ring and little fingers (4th & 5th) metacarpals. The wound, according to Dr Sitiveni Traill's report of 12 December 2005, was debrided and the fractures fixed with intramedullary K wires. The wires were subsequently removed on 9 December 2005, and according to Dr Traill, "all wounds

have healed". He was advised to undergo hand physiotherapy to reinstate the strengthen his grip.

In his follow-up report dated 29 June 2007, Dr Traill confirmed that the plaintiff had underwent hand physiotherapy on four (4) occasions. Further x-rays taken on 8 May 2007 showed that the fracture had united. Physical examination of the right hand revealed no muscle wasting. Dr Traill concluded that:

> **"Although the fractured (sic) had healed he is left with some impaired motion of his fingers and a substantial loss in his grip strength. Despite therapy he has not been able to improve his hand function and he has reached a stage where no further medical improvement can be obtained for his hand."**

Finally, the Medical Board comprising Dr Taloga, Consultant Orthopedic Surgeon and Dr Traill, Orthopedic Registrar, convened on 21 March 2006 to review the plaintiff's case. After tracing the plaintiff's injury medical history, the Board noted, regarding the Physiotherapy Department's recommended sessions with the plaintiff, that, "The records at the above department showed that Mr Vusovuso failed to attend some of therapy appointments." It is important to note this observation in the light of Dr Traill's report of later date I have referred to above, of 8 May 2007 and especially his conclusion. The Board in the end found as follows:

> **"Examination today showed the wound has healed. He has marked restriction of movement of all the finger joints of the right hand. X-Ray showed the fractures have united".**

The Board then recommended that, given that the plaintiff has not regained the full use of his right hand and that his fingers have remained stiff despite the time given for treatment and recovery, "with his present conditions Mr Vusovuso cannot return to work."

Upon the Medical Board's recommendation, the Government Printer on 9 June, 2006 decided that the plaintiff be retired. His salary was to cease on 16 May, 2006 with his extra sick leave payment.

Degree of Incapacity

Expert witness Dr Traill who had examined the plaintiff on several occasions, in his last report of 29 June 2007, observed that while there were discernable improvements to the fracture and bone formation, the plaintiff still had very restricted motions on his right little and ring fingers. The measurement of strength between the injured right hand to the left hand using a dynamometer showed an average strength of 10.4 kg in his right hand compared to 21 kg in his left hand. This represented a 50.4 percent strength loss of the plaintiff's right hand.

Dr Traill took into account that the plaintiff is right-handed. Using the American Guide to the Evaluation of Permanent Impairment (5th Ed.), Dr Traill assigned 5 percent impairment for impaired motion of the plaintiff's fingers and 12 per cent impairment for loss of the plaintiff's grip strength, giving a total 16 percent whole personal impairment.

Occupation Health & Safety (OHS) Report

According to OHS Inspectors Rohit Prasad and Mohammed Shiraz, they were directed to investigate and submit a report on the accident pursuant to a request from the Solicitor-Genera's office in relation to this Court case. The report they produced and termed "preliminary accident investigation" is based on information obtained from and interviews carried out by them with officials of the Government Printer held on 30 January 2007. The Report, exhibited in Court is dated 1 February 2007.

From the information gathered, the Inspectors surmised that the "probable cause of the accident" was that the foot pedal control activated the impression table of the sewing

machine in split of a second trapping and crushing the right hand of the victim while he was squaring and adjusting sewn book section."

The Inspectors conclusions are set out at paragraph 10 of the Report. It states:

"10.1 Overloading task in the sewing machine has been one of the contributing factors to the accident on 3rd October 2005. The sewing machine operator has been carrying out task for long periods and also in weekends. The machine operator is likely to be fatigued and stressed from carrying out the same duties for long periods.

10.2 Breakdown of communication and co-ordination between the operator and supervisor resulting in activation of foot pedal control.

10.3 The sewing machine is meant to be operated by a single person from where foot pedal control end is being situated and is away from the dangerous zone i.e. a single person accessing or adjusting book section in the machine can't reach foot pedal control or vice versa.

10.4 the faults in the sewing machine were not reported to the maintenance engineer i.e. the conveyor system was deemed to be performing in an unsatisfactory manner because the link between conveyor belt and impression table were not co-ordinated properly resulting in misalignment of book sections."

The Report then sets out certain recommendations for the benefit of the Management to prevent or minimize similar accident occurring in the future.

In-House Report

The report was compiled by the plaintiff's supervising officer, Joji Satakala, on 3 October, 2005, the day of the accident. The Court ordered the report to be produced following the revelation of its existence. It more than any other source, describes clearly what transpired on the day. According to Mr Satakala, the plaintiff, apart from overseeing the "Finishing Section" of the binding work, he was to ensure that the conveyor belt was moving smoothly. Whenever there was congestion on the belt, the plaintiff was expected to clear it. This was done manually by the plaintiff "putting his hand in the machine and push the sewn books to allow space for the next lot, as the conveyor belt of the delivery table was not operational as it should be." If the congestion is not cleared, papers get stuck on the machine and this leads to a pile up and in turn will result in any of the needles, namely, the punching, hooking or sewing needles breaking because of pressure. As the machine had only one spare needle left, there was additional pressure on the plaintiff and his co-workers in ensuring that no congestion that may lead to broken needles occurred.

The report concedes that the machine suffered from some mechanical problems and especially noted in its findings that inter alia, the all important link between the conveyor belt and impression table was not working. Nevertheless, the report, highlighted that:

> **"The clearing of the pathway is used to be communicated between operator and supervisor. This is the very vital point of the operation."** (emphasis added)

In other words because of the shortcomings in the machine, any clearing of congestion of the pathway by the plaintiff may not be undertaken until the pedal operator, Ms Sawana is warned and is aware of it. The report states that there were no communication between Ms Sawana and the plaintiff at the critical time of the latter's action in clearing the pathway. The report concluded that:

"the injury sustained to Mr Vusovuso was the direct result of malfunctioning of machine, no sufficient rest, lack of communications between the operator and the supervisor."

Court's Consideration

In its interim findings of 6 August, 2007, the Court stated:

"There was inadequate if at all, safety measures in place for a machine that was intended to be operated by one person only, but was operated by two in order to "speed up" the production of the 2006 Government official calendar. This is especially so in the light of the clearly established fact that the machine was not fully functional. To this extent the employer must be held liable.

There was nevertheless the Court finds, contributory negligence on the part of the plaintiff, especially in his capacity as a supervisor, by recklessly placing his hands on the machine without warning the operator, or at least adhering to the established safety system in place."

The reasons for the Court's findings are briefly set out below.

Employer's Duty of Care

In addition to the statutory duty requirements, an employer at common law owes a duty of care to its employees to ensure that they work alongside competent co-workers, that they have safe place of work, that they are provided with proper appliances which are maintained up to their proper conditions and a proper and safe system of work is implemented. Ms Serulagilagi, Counsel for the defendants has provided to the Court a very useful collection of case law and extracts from Michael A Jones Text book on Torts

(5th Ed.), Clerk & Lindsell on Torts (19th Ed.) outlining the emergence and establishment of the employer's legal duties of care to his employees. This Court had the opportunity to consider these principles in ***Chandrika Prasad v. Kishore Kumar*** HBC 252/2002S. It is not necessary to regurgitate the clearly laid down principles the Court would normally apply in claims involving the employer's failure to exercise duty of care.

In this instance, the Court has found as a fact that the binding machine had defects. These were identified by both the plaintiff and the management of the Department. The machine is old and the model, if not the Company, is no longer in production, or has ceased to exist. There are no spare parts to the machine. Replacement parts are from different machines or models. In places, such as the maintenance of 2 pushers that help propel papers onwards, only one is left. The other cannot be put back. All in all it is a wholly unsatisfactory state of affairs. One may well appreciate the first recommendation of the In-House Report stressing that the priority should be the purchase of a new automatic sewing machine "with built-in safety devices to address this matter."

In the light of the evidence presented to the Court it may safely conclude that the defendants as 'employer' had failed to provide proper plant and equipment for its employees. As the Court stated in ***Wilsons & Clyde Coal Ltd v. English*** [1938] AC 57, the obligation to provide proper plant and equipment is a continuing one ensuring that there is all the time maintenance of the plant and equipment to the highest level of safety.

Contributory Negligence

In its interim findings of 6 August, this court found the plaintiff guilty of contributory negligence. On the morning of the accident, the plaintiff was the supervising officer of the operation. As such he was responsible for overseeing that the binding and finishing work on the 2006 government diary was carried out not only promptly but ensuring at the same time the safety of his co-workers.

The management as well as the plaintiff were very much aware of the binding machine deficiencies. In response to this, the defendants had put in place a procedure or system of warning that was intended to protect the employees from injuries. Where there are two or more working on the machine at the same time and congestion of book sections or papers occur on the conveyor belt, the established arrangement is for the pedal operator to be warned to stop the machine, whilst the other(s) clear the congestion. The operator will not resume until he or she is told to do so.

In this instance, the operator Ms Sawana had stopped the machine on her own initiative, to pick up a book section that had fallen off the conveyor. The plaintiff without alerting Ms Sawana, took the opportunity of the stoppage, to clear the congestion beginning to build on the conveyor by pushing the books onwards. Ms Sawana, completely unaware of the plaintiff's hands still in the machine, re-started the machine resulting in the plaintiff's right hand being crushed. In a situation where only one person worked the machine, when there is congestion on the conveyor, it is the operator himself who stops the machine, gets up and go to clear the congestion, then returns and re-starts the machine. Ironically, safety was more assured in the hands of one worker than in the many.

The danger posed by the machine that was likely to result in the injuries sustained by the plaintiff are not always present. It only is bound to present itself, in situation where there are more than one person working on it. Lord Watson in ***Smith v. Baker & Sons*** [1891] AC 325 in recognizing such a situation, said, at p.354:

> ***"Sometimes (as in the present case) when the danger is not constantly present, but recurs at intervals, the defects maybe cured by giving the workmen timely warning of its approach. The employer may in such case protect himself, either by removing the source of danger, or by making provision for due notice being given. Should he adopt the latter course, he will still be exposed to liability if injury results from failure to give warning through the negligence of himself or of his superintendent."***

In this case the plaintiff knew the safety procedure put in place by the defendants to protect the workers. He failed to observe it. It is the more serious given the fact that he was supervisor and in-charge of the operation and including the safety of his co-workers. Certainly, if the situation in this case was reversed and that Ms Sawana was injured due to the plaintiff's action, without warning being given, the defendants would have been vicariously liable for any injuries to Ms Sawana as a result of the plaintiff's negligence. It is therefore clear to this Court that the plaintiff, in not warning Ms Sawana of his action, had failed to observe the Department's safety procedure and thereby contributed to his own injuries.

Apportionment of Plaintiff's Negligence

Counsel for the defendants, Ms Serulagilagi highlighted the guiding principle of apportionment of damages in her written closing submissions. First, the Court must be satisfied that there is fault on the part of both parties which has caused damage. Then the damages is reduced to such extent as the court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage. Counsel referred to ***Stapley v. Gypsum Mines Ltd*** [1953] 3 WLR 279 where contributory negligence was assessed at 80 per cent against the claimant for damages arising from injuries caused by an accident through the claimant's acts in breach of management orders. Other cases of ***Barrett v. Ministry of Defence*** [1994] 1 WLR 1217 and ***Jebson v. Ministry of Defence*** [2000] 1 WLR 2055 where the Courts have found that the primary responsibility for the injuries laid with the claimant and found two-thirds and 75 per cent contributory negligence respectively, against the claimant. Finally, the defendants cited ***Rushton v. Turner Brothers Asbestos Co. Ltd*** [1959] 1 WLR 96 which had similar facts situation to this case. The claimant in that case was a machine operator whose hands were crushed when, contrary to instructions, he attempted to clear the machine while it was still in motion. The Court found the employer not liable.

In this case the primary cause of the injuries was the binding machine that was not fully functional. It had defects that because of unavailability of proper spare parts had to make do with parts from other types or make of machines. In the ***Rushton case***, the machine's defect was only a few hours old and the management had allowed it to operate until it was to be repaired the next day. In this instance, the machine's defects have existed for years and were known to both management and workers. The defendants as employer had a duty to provide proper appliance and to maintain it in a proper condition. This they failed to do. Not having a "fully functional" binding machine necessitated the defendants putting in place a safe system of work for those operating the machine. It is this safe system of work that the plaintiff failed to observe and which led to the accident. It is the view of this Court that while the primary cause of the accident was attributable to the machine that was not fully functional, the most immediate cause was the plaintiff's failure to follow the instructions of communicating with the operator before putting his hands in the machine. I think in the circumstances the plaintiff must be held responsible for 50 per cent of the blame.

Damages

First the plaintiff claims general damages for pain and suffering, loss of amenities of life and loss of future earnings.

For pain and suffering and loss of amenities the plaintiff is asking for an award of $30,000. Mr Prasad, Counsel for the plaintiff referred the Court to cases of similar facts and awards including ***Subhash Chandra v. Domalco Ltd.*** No. 3 of 1998, ***Deo Ram v. Kanta Singh*** HBC 102/2001, ***Samuel Fong v. John Beater Enterprises Pty. Ltd.*** HBC 482/2003. Considering the nature of the injury, the plaintiff would have suffered considerable pain from the time he suffered his injuries. He was hospitalised for 2 days and his right hand operated upon while taking analgesics for pain. He was discharged on 5 October. According to Dr Traill, the plaintiff still complains of "intermittent pain" over the dorsum of his right hand and takes panadol regularly to control pain. Loss of amenities include stiffness of his right fingers which in turn results in the weakness of

his grip. He is unable to hold a cane knife or axe properly or firmly to use, although he can still dress himself. There is evidence however, according to the defendants, that the plaintiff was seen driving a vehicle, which necessitate the use and grip of his right hand. Dr Traill assessed the plaintiff's permanent impairment at 16 percent. The Court accepts this figure. I am however satisfied that the plaintiff is sufficiently recovered and although the right hand function cannot be restored fully, he is able to perform a good percentage of manly functions required of him. I do not believe that the pain and suffering is on-going, although he will sometime suffer some pain from exertion over the impaired right hand. All in all I am of the view that the sum of $10,000 is properly the amount that should be awarded for the plaintiff's pain and suffering and loss of amenities of life.

Under loss of future earnings the plaintiff claims $100,800.00. This is the sum total of his weekly salary of $320.77 x 52 weeks = $16,680.00 x 6 years (the plaintiff was 48 at the time of the accident and 6 years to retirement at 55) = $100,800.00. I am grateful to Mr Prasad, Counsel for the plaintiff for his very comprehensive submission on this issue. Mr Prasad canvassed the English, Canadian, American and Australian decisions and the development of the principles governing the Court's determination of a claimant's future pecuniary loss. In almost all of the cases cited by Counsel in his submission from these jurisdiction, there is consensus that the traditional methodology of the use of the conventional multiplicand/multiplier approach must not be a constraint on the Court's discretion to calculate the value of the lost earning capacity upon a different basis having regard to vicissitudes, contingencies and uncertainties of human life and working capacity.

In ***Lee Wee Lian v. Singapore Bus Co*** [1984] 1AC 729, the Privy council had expressed reservations on the use of arithmetic tables to calculate loss of future earnings, given the inevitable contingencies and uncertainties of life. There is another important factor which normally the English Courts take into account. The earnings which the claimant is assumed to have lost would have spread over the whole of the claimant's working life whereas the award of damages is paid as a lump sum now. It is because of this early payment that discount to the multiplier is allowed. These two

factors the contingencies and advance payment, that allow English Courts to reduce the figure for the multiplier substantially below the number of years during which earning capacity is assured to have been diminished. In ***Lee Wee Lian case***, whilst the claimant was only 28 years old at the time of the accident, the Court agreed that a multiplier of 10 years was correct.

The issue of multiplicant/multiplier approach was also dealt with in ***Blamire v. South Cambria Health Authority*** [1993] P1QRQ1. The claimant, a nurse and was prevented from continuing her career by her back injury. The trial judge awarded her £25,000 for loss of earnings, earning capacity and loss of pension benefits. The claimant appealed on the ground that the award was too low and that if the Court had used the conventional multiplicand/multiplier formula, the multiplier would be between 13 and15 and the loss would have been in the vicinity of £100,000 to £118,000. Lord Justice Steyn in rejecting the claimant's submission on appeal said, firstly,

> **"... there can be no doubt that the issue whether a multiplicand/multiplier approach was appropriate was in the forefront of his mind. It is clear, in my judgment that the judge took the view that the conventional measure was inappropriate ...."**

The Court then discussed what factors the trial judge would have taken into consideration in arriving at his decision, including the uncertainty as to what the claimant would have earned over the course of her working life if she had not been injured, the possibility of her having children, the fact that she would have preferred part-time work. These are all "imponderables" that would have made the Court shy away from the conventional method of assessment.

Lord Justice Steyn added:

> **"It seems to me that the judge carefully assessed the prospects and the risks for the plaintiff. He had well in mind that it was his**

> duty to look at the matter globally and to ask himself what was the present value of risk of future financial loss. He had in mind that there was no perfect arithmetical way of calculating compensation in such a case. Inevitably one is driven to the broad brush approach. The law is concerned with practical affairs and as Lord Reid said in ***British Transport Commission v. Gourley*** [1956] AC 185 at page 212 ***"very often one is driven to making very rough estimate of the damages."***

Australian as well as Canadian and American Courts have generally adopted a similar position to that of the English Courts. Our own Supreme Court in ***Attorney-General of Fiji v. Broadbridge*** SC No. 5/2003 held a similar view, stating that there is no principle or rule of common law in Fiji that requires a Fiji Court in assessing future economic loss, to adopt the multiplicant/multiplier approach whether for the purpose of calculating the value of the loss chance of the future increased earnings or for the purpose of calculating the present value in lump sum term of these earnings. The guiding principle in the end, whether the Court adopts the conventional one or the other approach of assessment is that the plaintiff is entitled to be compensated for the lost chance of exploiting his capacity to be employed to the full. He is entitled to damages for the difference between the earning capacity as it would have been had there been no injury, and the earning capacity as it is now.

In this case, the plaintiff was 48 years old at the time of the accident. He had 6 more years before being eligible to retirement. Realistically he had no prospect of advancing his career further in the Department. In assessing the quantum of damages, I do not believe this Court is justified in adopting the conventional multiplicant/multiplier approach favoured by the plaintiff. There are good reasons for this. They constitute special factors of the case. First, the extent of the plaintiff's injuries. He had his two small fingers on his right hand crushed. The bones, according to his medical reports, have united and healed completely. All that is left is a slight impairment of motion and some stiffness of his fingers and a loss of strength and grip of his right hand. He stayed at home and did not return to work instead utilizing the whole of his 180 days inpatient

sick leave entitlement. While the doctors had recommended that he underwent physiotherapy sessions, the Medical Board reported that he failed to attend some of the sessions. The doctor's reports as well as the Medical Board assessment, concluded that the plaintiff "cannot return to work". When cross-examined, the plaintiff said he had only visited his workplace to tender his sick sheets over the months of his sick leave. He did not go back to work because the doctors advised that he could not. The recommendation of the Department Staff Board was that the plaintiff be retired on medical ground. Nevertheless, the Staff Board allowed the plaintiff 21 days to respond if he disagreed and that he give reasons why he should not be retired. The plaintiff did not respond. Again when cross-examined, the plaintiff conceded that he could have still found some "light-duties" employment in other sections with the defendants, but he did not actively pursue it.

It is clear from the evidence and supported by the documents tendered to the Court that the plaintiff, having filed his writ of claim against the defendants on the 3 February 2006 and 3 months before he was to retire, no longer was interested in continuing to work for the defendants, even if in a different section or capacity. He was quite happy in my view, to be retired on medical grounds relatively assured of some chance of success of his claim of damages against the defendants. He did not actively seek to discuss let alone negotiate further opportunity to keep working for the defendants. His latest medical report revealed at the most, he was 16 per cent impaired. The American Guide to the Evaluation of Permanent Impairment (5th Ed) on which Dr Traill based the plaintiff's 16 percent whole person impairment emphasises that impairment percentages or ratings,

> ***"... reflect the whole severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common activities of daily living, excluding work. Impairment ratings were designed to reflect functional limitations and not disability."*** (emphasis added)

The evaluation of 16 per cent whole person impairment which Dr Traill attributes to the plaintiff refers to functional limitations of the right hand. It does not reflect the plaintiff's ability or disability to find work or continue to be employed by the defendant in line of work that recognises the functional limitations of his right hand. This is not a case where the earning capacity is totally destroyed. The plaintiff still very much enjoys the capacity to earn, and he has freely admitted in cross-examination that he is involved in some business in Navua town. To the extent however that the plaintiff can no longer enjoy one hundred per cent of functions of his right hand and therefore is not free to resume work in the same capacity as before, the Court acknowledges and must take into account in assessing damages.

The Court in the end recognises that the plaintiff is entitled to damages for future economic loss both in the capacity and loss of earnings, but taking into consideration the special factors of this case. In the end, the Court is satisfied that an award of $35,000.00 is appropriate in damages for the plaintiff's claim for loss under this head. This lump sum award is not calculated on the conventional multiplicant/multiplier formula and therefore does not attract FNPF elements.

Special Damages

The defendants had already admitted special damages in the sum of $5,500.00. Defendants sought leave which the Court granted to up-date the special damages especially with regards to on-going losses. A final figure of $13,711.64 was submitted, the details of which is set out in the plaintiff's submission. The Court will allow the sum of $13,711.64 in special damages.

Interest

Interest of 5 per cent is awarded on special damages from the date of injury to the date of hearing. On general damages, the more appropriate rate is 3 per cent from the date of issuance of Writ to the date of judgment.

Conclusion

In summary, the Court finds as follows:

1.	**General damages**			
	(i)	Pain and suffering and loss of amenities of life	:	$10,000.00
	(ii)	Future loss of earnings	:	35,000.00
				$45,000.00
	(iii)	Interests at 3 per cent from 3 February 2006 to 25 July 2007	:	1,912.50
2.	**Special damages**		:	13,711.64
	Interest at 5 per cent from 30 October 2005 to 3 July 2007		:	1,199.76
3.	Total damages awarded		:	$61,823.90
4.	Less 50 per cent contributory negligence by the plaintiff		:	$30,911.95
				$30,911.95

Judgment is entered for the plaintiff in the amount of $$30,911.95.

Costs of $400 is summarily assessed against the defendants to be paid within 14 days.

F Jitoko
JUDGE

At Suva
Friday 25 July 2008